

COMMONWEALTH OF KENTUCKY  
MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. **06-MSRC-007**

COMMONWEALTH OF KENTUCKY,  
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

**FINAL ORDER**  
**FOR**  
**LESTER & STAPLETON**

**STEVEN R. LESTER, WILLIAM G. RATLIFF,  
MICKY STAPLETON & VICTOR NEWSOME**

RESPONDENTS

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**PROCEDURAL HISTORY**

This matter comes before the Mine Safety Review Commission upon a Motion for Default by the Complainant, Kentucky Office of Mine Safety and Licensing ("OMSL"). OMSL by counsel, filed its Complaint on March 2, 2006, against the Respondents as above. Probable Cause was determined by the Mine Safety Review Commission ("Commission") on March 9, 2006 regarding each Respondent. Subsequent to that determination the Order for Probable Cause, Assigning Case, Setting Filing Requirements, Scheduling Pre-hearing Conference and Scheduling Formal Hearing ("Order") was mailed regular mail and certified mail to all respondents as above with a copy of the Complaint attached.

The Order and Complaint were delivered to Respondent Steven R. Lester on March 14, 2006 and to Respondent Micky Stapleton on March 20, 2006. The original return receipts show delivery to the addresses Respondents filed with OMSL for licensing and certification purposes.

### FINDINGS OF FACT

1. OMSL is the agency charged with administering the Commonwealth's safety laws as set forth in KRS Chapters 351 and 352 and the Kentucky Administrative Regulations adopted pursuant thereto.
2. Respondent Steven R. Lester ("Lester") was, at all times relevant to this Complaint, a citizen and resident of the Commonwealth of Kentucky, whose mailing address is: 100 Rowe Camp Lane, P.O. Box 111, Fedscreek, Kentucky 41524-0111. At all times relevant to this Complaint, Lester was an Electrician at the Ivy Fork Mining, LLC No. 1 mine ("the mine"), an underground coal mine operated by Ivy Fork Mining, LLC ("Ivy Fork" or "the company") and located at Pikeville, Pike County, Kentucky.
3. Respondent Lester is certified as an electrical worker by the Commonwealth of Kentucky on certificate number PE-506-02. He is also certified by the Commonwealth as an underground miner and for gas detection, certificate number PE-187-95.
4. Respondent Micky Stapleton ("Stapleton") was, at all times relevant to this Complaint, a citizen and resident of the Commonwealth of Kentucky, whose mailing address is: 290 Left Fork of Toler Creek, Harold, Kentucky 41653-8876. At all times relevant to this Complaint, Stapleton was the Superintendent at the mine.
5. Respondent Stapleton is certified as an underground mine foreman by the Commonwealth of Kentucky on certificate number A-152-91. He is also

certified by the Commonwealth as: an underground miner; a shot firer-solid blasting, certificate number PE-60-82M; a shot firer-conventional, certificate number PE-29-82G; for gas detection, certificate number MN-391-80; and as a drill operator, certificate number PE-37-82M.

6. Jurisdiction for this action is founded upon KRS 352.390, which provides that the "Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the Commission that the holder has become unworthy to hold the certificate by reason of violation of law, intemperate habits, incapacity, abuse of authority, failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause;" on KRS 351.025(1), which requires the Department of Mines and Minerals (now the Office of Mine Safety and Licensing) to "promulgate administrative regulations...for the imposition and enforcement of sanctions against certified...personnel...whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death;" and on 805 KAR 8:030 ("Criteria for the imposition and enforcement of sanctions against certified miners").
7. Service of the Order and Complaint upon Respondents Lester and Stapleton is determined to be perfected pursuant to 825 KAR 1:020 Section 5 (3), and KRS 13B.050.
8. Respondents Lester and Stapleton did not file an Answer or any other responsive pleading within the time limit established by the Commission and KRS 13B and had not filed an Answer or other responsive pleading on



or before the Motion for Default Order was filed by OMSL. Additionally, Respondents Lester and Stapleton have not filed a response to or opposed the Motion for Default Order on or before the date of this order, May 11, 2006.

#### CONCLUSIONS OF LAW

Based upon the evidence admitted, the failure of the Respondents to deny or otherwise defend and the record taken as a whole, the Commission finds the foregoing facts are established by a preponderance of the evidence. By reason of their roles in and responsibilities for the violations of Kentucky's mine safety laws set out in the Complaint of record herein, Respondents Lester and Stapleton are subject to the imposition of sanctions as provided in KRS 352.390 and 805 KAR 8:030.

#### FINAL ORDER

**WHEREFORE**, it his hereby **ORDERED** by the Mine Safety Review Commission:

1. The Motion for Default Judgment as to Steven R. Lester and Micky Stapleton is **GRANTED**.
2. The Formal Hearing and Pre-Hearing Conference, and other pre-hearing deadlines are hereby **CANCELLED** as to Lester and Stapleton, but remain fully in effect for all other Respondents.
3. The Commission Orders and incorporates the disciplinary measures as provided in the Complaint as to Lester and Stapleton and the following measures as a material part of this **FINAL ORDER**.

4. Steven Lester's electrical worker's certificate number PE-506-02, gas detection and underground miner's certificates PE-187-95 shall be placed on probation for a period of two (2) years.
5. Micky L. Stapleton's underground mine foreman's certificate #A-152-92 shall be revoked for a period of one (1) year. Stapleton's other certifications: underground miner's, shot firer-solid blasting, certificate number PE-60-82M, and shot firer-conventional, certificate number PE-29-82G; and for gas detection, certificate number MN-391-80; and as a drill operator, certificate number PE-37-82M, shall be placed on probation for two (2) years.
6. After Stapleton's one (1) year revocation period has expired Stapleton shall be required to re-take and pass the Kentucky underground mine foreman's examination before re-applying to the Kentucky Mining Board to be re-certified as an underground mine foreman.
7. During their periods of probation Respondents Lester and Stapleton shall be required to comply with all state and federal mine safety laws and regulations and that the willful violation of any said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke that Respondent's underground miner's certificate for the remainder of the probationary period.
8. Respondents Lester and Stapleton shall be required to take eight (8) hours each of special safety training from OMSL's Pikeville district office within forty-five (45) days of the date that this judgment is entered against them.

9. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
10. This Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13);
11. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and

12. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 11<sup>TH</sup> day of MAY 2006.



DENISE MOORE DAVIDSON, CHAIR  
MINE SAFETY REVIEW COMMISSION



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 12<sup>TH</sup> day of May 2006:

MR. STEVEN R. LESTER  
100 ROWE CAMP LANE  
P.O. BOX 111  
FEDSCREEK, KENTUCKY 41524-0111

MR. MICKY STAPLETON  
290 LEFT FORK OF TOLER CREEK  
HAROLD, KENTUCKY 41653-8876

And by regular mail to:

MR. WILLIAM G. RATLIFF  
1303 ROCKY ROAD  
PIKEVILLE, KENTUCKY 41501-8010

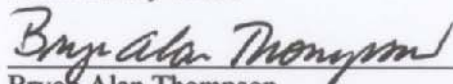
MR. VICTOR NEWSOME  
300 SLONE HOLLOW ROAD  
BEAVER, KENTUCKY 41604-6314

And by messenger mail to:

Hon. JENNIFER CABLE SMOCK  
Office of Legal Services  
Natural Resources Legal Division  
#2 Hudson Hollow  
Frankfort, Kentucky 40601  
(502) 564-2356  
FAX: (502) 564-9212

And the original shall be kept on file:

Mine Safety Review Commission  
132 Brighton Park Blvd.  
Frankfort Ky 40601



Bryon Alan Thompson  
Hearing Officer & General Counsel  
Mine Safety Review Commission